

REMARKS

In response to the above-identified Office Action ("Action"), Applicants traverse the Examiner's rejection to the claims and seek reconsideration thereof. Claims 1-12 are pending in the present application. Claims 1-6 and 8 are withdrawn. In this response, claims 7 and 9-12 are amended, no claims are cancelled and no claims are added.

The instant application is directed to a method for the detection of bacteria, comprising the steps of culturing bacteria in a medium under anaerobic conditions, the medium comprising an ammonical iron citrate which allows the oxidative polymerization of an indoxyl chemical derivative and a substrate containing an indoxyl chemical derivative selected from the group consisting of X-Gal, X-Phos, X-acglmn, Mag-Gal, Mag- α -Gal, and Mag-Phos to result in an insoluble colored compound, allowing the oxidative polymerization of said indoxyl chemical derivative to occur in the presence of the bacteria and ammonical iron citrate or ferricyanide; and deleting the formation of a colored halo around the bacteria.

I. Claim Amendment

Applicants respectfully submit herewith amendments to claims 7 and 9-12.

Claim 7 is amended to include the elements of a "medium comprising an ammoniacal iron citrate or ferricyanide," "an indoxyl chemical derivative and a substrate containing an indoxyl chemical derivative selected from the group consisting of X-Gal, X-Phos, X-acglmn, Mag-Gal, Mag- α -Gal, and Mag-Phos," "allowing the oxidative polymerization of the indoxyl chemical derivative to occur in the presence of the bacteria and ammoniacal iron citrate or ferricyanide" and "deleting the formation of a colored halo around the bacteria." Support for the amendments may be found, for example, on page 7, lines 20-30; page 15, Example, 5; page 15, Table 11.

Claims 9 is amended to incorporate the limitation of claim 8 and recite process steps including the step of "adding an oxidizing metal complex to the medium, the oxidizing metal complex selected from the group consisting of ammoniacal iron citrate and ferricyanide."

Support for the amendments to claim 9 may be found, for example, on page 15, example, 5 and page 7, lines 20-25.

Claims 10-12 are amended to recite the limitations in the form of process steps and claim 12 is further amended to depend from claim 7 instead of withdrawn claim 1.

Applicants respectfully submit, in view of the foregoing, the amendments to claims 7 and 9-12 are supported by the specification and do not add new matter. For at least the foregoing reasons, Applicants respectfully request consideration and entry of the amendments to claims 7 and 9-12.

II. Claim Rejections – 35 U.S.C. §112

In the outstanding Action, the Examiner rejects claims 7 and 9-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 7, claim 7 is amended to be in independent form and to recite steps involved in the method. In addition, the recitation of “indoxyl derivative” is amended to recite “chemical indoxyl derivative.” Applicants believe the amendments to claim 7 overcome the rejections to the claim raised by the Examiner.

In regard to claims 9-12, claim 9 is amended to be in independent form and claims 10-12 are amended to recite process steps. In addition, claim 12 is amended to depend from claim 7 instead of withdrawn claim 1. Applicants believe the amendments to claims 9-12 overcome the rejections to the claims raised by the Examiner.

In view of the foregoing, Applicants believe claims 7 and 9-12 are in compliance with 35 U.S.C. §112, second paragraph. For at least the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the rejections to claims 7 and 9-12 on this basis.

III. Claims Rejected Under 35 U.S.C. §101

In the outstanding Action, the Examiner rejects claims 9-12 under 35 U.S.C. §101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process.

As previously discussed, claims 9-12 are amended to recite process steps. In view of the foregoing, Applicants believe claims 9-12 are in compliance with 35 U.S.C. §101. Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claims 9-12 on this basis.

IV. Claims Rejected Under 35 U.S.C. §102

In the outstanding Action, the Examiner rejects claims 7 and 11-12 under 35 U.S.C. 102(b) as being anticipated by Haines et al. ("Haines"). Applicants respectfully traverse the rejection.

In regard to independent claim 7, Applicants respectfully submit the Examiner has not pointed to and Applicants are unable to discern a portion of Haines teaching at least the elements of "culturing bacteria in a medium under anaerobic conditions, the medium comprising an ammonical iron citrate or ferricyanide which allows the oxidative polymerization of an indoxyl chemical derivative and a substrate containing an indoxyl chemical derivative selected from the group consisting of X-Gal, X-Phos, X-acglmn, Mag-Gal, Mag- α -Gal, and Mag-Phos to result in an insoluble colored compound," "allowing the oxidative polymerization of said indoxyl chemical derivative to occur in the presence of the bacteria and ammonical iron citrate or ferricyanide" and "deleting the formation of a colored halo around the bacteria" as recited in amended claim 7. Since Haines fails to teach at least this element, anticipation may not be found. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 7 under 35 U.S.C. §102.

In regard to dependent claims 11 and 12, claim 11 includes the element of "selecting an ammoniacal iron citrate as the oxidizing metal complex" and claim 12 depends from claim 7 and incorporates the limitations thereof. Thus, for at least that Haines fails to teach at least the

element of ammoniacal iron citrate or ferricyanide as the oxidizing metal complex as discussed above, Haines further fails to anticipate claims 11 and 12. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 11 under 35 U.S.C. §102.

V. Claims Rejected Under 35 U.S.C. §103

In the outstanding Action, the Examiner rejects claims 7 and 9-12 under 35 U.S.C. 103(a) as being unpatentable over Haines taken with Chevalier et al. ("Chevalier"). Applicants respectfully traverse the rejection.

In regard to independent claims 7 and 9, for at least the reasons previously discussed, Haines fails to teach or suggest at least the element of an oxidizing metal complex selected from "ammoniacal iron citrate or ferricyanide" as recited in claims 7 and 9. The Examiner has further not pointed to and Applicants are unable to discern a portion of Chevalier curing the deficiencies of Haines with respect to at least this element. Since neither Haines nor Chevalier, alone or in combination, teach or suggest each and every element of claims 7 and 9, a *prima facie* case of obviousness may not be established. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 7 and 9 under 35 U.S.C. §103.

In regard to claims 10-12, claims 10-11 depend from claim 9 and claim 12 depends from claim 7 and therefore incorporate the limitations thereof. Thus, for at least the reasons discussed in regard to claims 7 and 9, Haines in view of Chevalier fails to teach or suggest at least the element of "ammoniacal iron citrate or ferricyanide" as further found in claims 10-12. Since neither Haines nor Chevalier, alone or in combination, teach or suggest each and every element of claims 10-12, a *prima facie* case of obviousness may not be established. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 10-12 under 35 U.S.C. §103.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-12, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

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By: 
Stacie J. Sundquist / Reg. No. 53,654

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
Telephone (310) 207-3800
Facsimile (310) 820-5988

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on January 24, 2007.


Si Vuong